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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 MICHAEL SPAFFORD, JR.,

11 Plaintiff,

12 v.

13 ECHOSTAR COMMUNICATIONS
14 CORP., et al.,

15 Defendants.
16

CASE NO. C06-479JLR

ORDER

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18 This matter comes before the court on Defendants' motion for summary judgment
19 (Dkt. # 72). The court finds the motion premature and DENIES it without prejudice. The
20 court grants Plaintiff's request to continue the motion in order to pursue additional
21 discovery. See Fed. R. Civ. P. 56(f). The court declines Defendants' invitation, raised
22 for the first time in reply, to impose limitations on discovery.

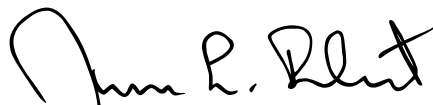
23 In denying Defendants' motion, the court must address two of Defendants' legal
24 contentions that relate to whether Plaintiff may pursue additional discovery on the
25 question of vicarious liability. First, Defendants argue that Plaintiff failed to sufficiently
26 plead the existence of an agency relationship in his complaint. The Ninth Circuit has
27 reasoned that claimants need not allege agency in order to satisfy notice-pleading
28 requirements. See Greenberg v. Sala, 822 F.2d 882, 886 (9th Cir. 1987) ("A person

1 legally responsible for an act may be alleged to have committed it without going into the
2 theories which support that ultimate fact.”). Thus, the court rejects this basis for granting
3 summary judgment.

4 Second, Defendants contend that Plaintiff may not pursue an agency theory of
5 liability under the statute at issue in this case, RCW § 80.36.400 (holding persons liable
6 for use of automatic dialing and announcing devices (“ADADs”) for commercial
7 solicitation purposes). No Washington court has determined whether the ADAD statute
8 encompasses agency liability. Nevertheless, because the court finds persuasive the
9 rationale of other courts that recognize vicarious liability in the context of similar
10 statutory schemes, the court denies summary judgment on this basis and directs the
11 parties to proceed with discovery. See, e.g., Accounting Outsourcing, LLC v. Verizon
12 Wireless Pers. Commc’n, L.P., 329 F. Supp. 2d 789, 806 (M.D. La. 2004) (finding
13 vicarious liability under federal Telephone Consumer Protection Act where advertisers
14 hired third-parties to fax unsolicited advertisements in contravention of statute).

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16 For the reasons stated, the court DENIES Defendants’ motion without prejudice
17 (Dkt. # 72).

18 Dated this 16th day of July, 2007.

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22 JAMES L. ROBART
23 United States District Judge
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